

1990

## Uintah County v. Reidhead : Brief of Appellee

Utah Court of Appeals

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### Recommended Citation

Brief of Appellee, *Uintah County v. Reidhead*, No. 900491 (Utah Court of Appeals, 1990).

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BRIEF

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DOCKET NO.

900491-CA IN THE UTAH COURT OF APPEALS

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UINTAH COUNTY,	:	
	:	BRIEF OF APPELLLEE
Plaintiff and Appellant,	:	
	:	
vs.	:	
	:	
JIMMIE N. REIDHEAD, NYLE C.	:	Case No. 900491-CA
BIGELOW, GLENN MCKEE, Uintah	:	
County Commissioners, WESTERN	:	
SURETY CO., bondsman,	:	
	:	
Defendants and Appellees.	:	Argument Priority No. 16

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BRIEF OF APPELLEES

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AN APPEAL OF A SUMMARY JUDGMENT OF THE EIGHTH JUDICIAL  
DISTRICT COURT OF UINTAH COUNTY, STATE OF UTAH  
Judge Dennis L. Draney

---

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IN THE UTAH COURT OF APPEALS

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Plaintiff and Appellant,	:	
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LIST OF PARTIES

A. Designation of Plaintiff and Appellant.

The plaintiff and Appellant is Uintah County.

B. Designation of Defendant and Appellee.

The Defendant and Appellee is Jimmie N. Reidhead,  
Nyle C. Bigelow, and Glenn McKee, Uintah County  
Commissioners, and Western Surety Co., Bondsman

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### JURISDICTION

This Court has jurisdiction to hear this appeal under Utah Code Annotated, §78-2-2(3)(j) and §78-2-2(4).

### ISSUES PRESENTED FOR REVIEW

Was Summary Judgment in favor of Defendants appropriate. The standard of review on this issue is the Appeals Court reviews the Trial Court's decision for correctness and analyzes the facts and inferences in the light most favorable to the losing party. Gaw vs. State of Utah 143 Utah Adv. Report. 27, 30 (1990).

### STATEMENT OF THE CASE

#### A. NATURE OF THE CASE

An action was brought by the Uintah County Attorney pursuant to Utah Code Annotated §17-5-12 against the Uintah County Commissioners as individuals and against their bondsman alleging that Uintah County Commissioners expended County funds inappropriately and asking for the reimbursement to the County of the funds expended.

#### B. COURSE OF PROCEEDINGS

The Defendants answered, filed a Motion for Summary Judgment with supporting affidavits. Plaintiff was allowed

a period of time to conduct discovery after which oral argument was heard on Defendant's Motion for Summary Judgment. The Court, after considering the oral arguments, granted Defendant's Motion for Summary Judgment.

STATEMENT OF FACTS RELEVANT TO THE ISSUES  
PRESENTED FOR REVIEW

For purposes of the Motion for Summary Judgment and therefor for purposes of this Appeal, Defendants admitted the facts as alleged in Plaintiff's Complaint were true with the exception of the allegation that Defendant Glenn McKee had violated certain public disclosure requirements of Utah law. (Record at page 24).

For the purposes of the Motion for Summary Judgment and therefore this Appeal the Defendants also admitted the facts as outlined in the Statement of Facts of Plaintiff's Brief.

Defendants submit the following are also facts relevant to the issues presented for review.

1. Defendants, Reidhead, Bigelow and McKee, relied on their subordinates, Jim Shewell, Uintah County Superintendent of Buildings and Grounds, and Dean Pope, Uintah County Purchasing Agent, in acquiring the bids and presenting them to the Uintah County Commission for the roof repairs to the County Library, the old Courthouse and the Uintah Care Center. (Affidavits of Shewell, Pope, Reidhead, Bigelow and McKee). (Record at pages 42, 46, 27, 55 and 50).



2. That Jim Shewell, as Superintendent of Buildings and Grounds, solicited the bids for the roofing project, and presented them to the County Commission in accordance with the Uintah County Purchasing Policies and Procedures. (Affidavit of Jim Shewell). (Record at page 42).

3. That the Uintah County Purchasing Policies and Procedures were prepared by Dean Pope and reviewed and approved by the Uintah County Attorney. (Affidavit of Dean Pope). (Record at page 46).

4. That the Uintah County Commissioners relied on their subordinates, Jim Shewell and Dean Pope, to solicit the bids and present the proposals to them and presumed that when the proposals were presented to them in the County Commission Meetings, by Jim Shewell and Dean Pope, that the Uintah County Policies and Procedures and the requirements of State law had been complied with. (Affidavit of Reidhead, Bigelow and McKee). (Record at pages 27, 55 and 50).

5. That Defendant, Glenn McKee, at the time the bids were let was not a representative of SWEPCO, did not have any agreement with SWEPCO, did not receive any remuneration or other consideration for awarding the roofing contract to SWEPCO or Arlo Dean. (Affidavit of Glenn McKee). (Record at page 50).

6. That none of the County Commissioners knew that the bids were not solicited in compliance with Utah law nor awarded in compliance with Utah law. (Affidavits of Reidhead, Bigelow and McKee). (Record at pages 27, 55 and 50).

7. That none of the County Commissioners had any relationship with Arlo Dean, SWEPCO or any other supplier of labor or materials on the roofing projects. (Affidavits of Reidhead, Bigelow and McKee). (Record at pages 27, 55 and 50).

8. Defendants evaluated all bids presented to them and rejected the lowest bids based on their evaluation of the low bidder. (Affidavits of Reidhead, Bigelow and McKee). (Record at pages 27, 55 and 50).

#### SUMMARY OF ARGUMENT

Defendants assert that Trial Judge's Ruling on the Motion for Summary Judgment is appropriate. Defendants cannot be held personally liable for the expenditure of County funds even when the expenditure was made in violation of state law or county ordinances if the Defendant's actions were taken in good faith.

ARGUMENT

Point I

THERE ARE NO MATERIAL FACTS IN DISPUTE  
AND SUMMARY JUDGMENT IS APPROPRIATE

Defendants agree that the law regarding Summary Judgment is as stated in Plaintiff's Brief on Appeal. Defendants, however, disagree that there are any material facts in dispute. The record on appeal contains Affidavits and Depositions of the Defendant County Commissioners and two employees of the County, Mr. Dean Pope and Mr. Jim Shewell. (Record at pages 27, 42, 46, 50 and 55). Plaintiff filed no Affidavits which counter the facts averred in these five Affidavits. Plaintiff did file Affidavits of Alvin Nash (Record page 61) and an Affidavit of Arlo Dean (Record page 108), but these affidavits do not counter the affidavits of Defendants filed with the Motion for Summary Judgment. Defendants for the purpose of their Motion for Summary Judgment and, therefore, this appeal have admitted as true the facts contained in Appellant's Statement of Facts in its Brief. The additional facts averred in Defendants Affidavits and the Affidavits of Mr. Dean Pope and Mr. Jim Shewell have not been countered by any Affidavits filed by Plaintiff. Additionally, Defendants for purposes of the Motion for Summary Judgment and, therefore,

this appeal, have admitted as true all of the facts contained in Plaintiff's Complaint with the exception of the allegations in the Complaint that the County Commissioners did not act in good faith and knew or should have know that their actions were not in compliance with Utah State law and the allegations contained specifically against Defendant Glenn McKee. Both of these unadmitted allegations were countered by Affidavits of the Commissioners. There are, therefore, no material issues of fact which are currently in dispute.

When a Motion for Summary Judgment is filed and supported by affidavits, the party opposing the Motion has the duty to respond with affidavits or other materials that may be allowed by the Utah Rules of Civil Procedure. Plaintiff may not rely on the allegations of its Pleadings to create an issue of fact. D & L Supply vs. Saurini, 775 P.2d 420 (Utah 1990). All facts material to the Court's determination of Summary Judgment in favor of Defendants were either admitted as alleged by Plaintiff's Complaint or contained in the uncontroverted Affidavits of Defendants. Therefore, there are no genuine issues of material fact which precluded the Court from granting Summary Judgment.

POINT II

COUNTY COMMISSIONERS CANNOT BE HELD PERSONALLY LIABLE FOR  
IMPROPER PAYMENT OF MONEY FOR A PURPOSE AUTHORIZED BY LAW.

Plaintiff bases its claim against the County Commissioners on Section 17-5-12, of the Utah Code Annotated which reads as follows:

Whenever any board of county commissioners shall, without authority of law, order any money paid for any purpose and such money shall have been actually paid, or whenever any other county officer has drawn any warrant in his own favor or in favor of any other person without being authorized thereto by the board of county commissioners or by law and the same shall have been paid, the county attorney of such county shall institute suit in the name of the county against such person or such officer and his official bondsman to recover the money so paid, and when the money has not been paid on such order or warrants, the county attorney of such county upon receiving notice thereof shall commence suit in the name of the county to restrain the payment of the same; no order of the board of county commissioners shall be necessary in order to maintain either of such actions.

In the case of Salt Lake County vs. Clinton et.al, 39 Utah 462, at 471, 117 p. 1057 (1911), the Salt Lake County Commissioners were alleged to have paid a printing bill without having followed the statutory procedure for letting the bid for the printing work. The lower Court awarded the equivalent of Summary Judgment to the County Commissioners and Plaintiffs appealed. For purposes of the appeal, the allegations of the Complaint were deemed true and admitted. The issue in Clinton was almost identical to the issue raised by Plaintiff's Complaint in this matter.

In Clinton the plaintiff sued under Section 506 of the Utah Compiled Laws of 1907 which is in substance identical to Section 17-5-12 of the present Utah Code. The analysis the Utah Supreme Court used in Clinton is the appropriate analysis to be applied to this matter.

The Court in Clinton referred to County Commissioners as quasijudicial officers and reasoned that as quasijudicial officers they are not personally liable for errors or mistakes while honestly exercising, within their proper jurisdiction, functions of their office. The relevant questions for the Court were whether the expenditure of funds was for an authorized function or purpose of Counties and if so was it done in accordance to law, and if not, was there bad faith in not complying with the law.

In Clinton the Court found that Counties were authorized to let contracts for printing and that since there is no evidence of bad faith or fraud the Commissioners themselves could not be held personally liable for the payment of the printing bill even though the contract was not let in accordance with the bidding requirements of that time.

The Utah Supreme Court in explaining its ruling stated as follows:

As we have suggested, every public officer exercising judicial, or quasijudicial, power, whose duty it is to appropriate and pay out public funds for material furnished or services rendered to the public must, of course, be guided by the law requiring or authorizing such payments to be made. He may, however, in exercising his discretion, misconstrue or misapply the law, if he does so in good faith, and there is no collusion, fraud or corruption on his part, he cannot be compelled to repay money he may have paid irregularly or in an unauthorized manner for material furnished or services rendered for the public benefit. If the purpose for which the money is devoted is a public one, and the law authorizes or directs the officer, in the exercise of his judicial or quasijudicial functions, to apply it for such purpose, then, ordinarily, the officer cannot be held personally liable for an error of judgment or for being mistaken with regard to the manner of making payment, or for not strictly following the procedure required by law before the payment is made. Salt Lake County vs. Clinton et al., 39 Utah 462, at 471, 17 P. 1057 (1911).

In the matter before this Court it is alleged that payments were wrongfully made for repairs to County buildings. Utah Code Annotated Section 17-5-45 provides that Counties, "may erect, repair or rebuild, and furnish a Court House, jail, hospital and such other buildings as may be necessary ...." Since roof repairs are within the power of County Commissions the issue then becomes was this power exercised in accordance with State law, and if not, was the failure to comply with State law bad faith or fraudulent.

As the Supreme Court in Clinton said:

The question is whether the payment of money in question was, under the circumstances, paid without authority of law, or wrongfully paid in bad faith, or in fraud. Clinton, Supra, at page 471 and 472.

Plaintiff made no allegation of fraud and there is no evidence of bad faith. The only allegation of bad faith is that the bid was not made in compliance with Utah State law. While Defendants admitted this for purposes of the Motion for Summary Judgment, they assert this is not evidence of bad faith. The uncontroverted facts set forth in their affidavits (Record at pages 27, 50 and 55) indicate that they acted pursuant to the advice of their subordinates, who they assumed were following appropriate procedure.

Even if the bid may have not been let pursuant to the procedures mandated by the Utah Law, the money was expended for a proper function of Counties for the benefit of the citizens and in good faith, without any fraud or collusion.

Although Clinton, Supra, is an old case, it is still very good law. Clinton, Supra, was cited by the Court in support of its ruling in the case of Snyder vs. Merkley 693 P.2d 64 (Utah 1984). In Snyder vs. Merkley, a tax payer brought an action against the Uintah County Commissioners and County Clerk Auditor, alleging that the Commissioners had illegally approved expenditures of funds for certain attorney's fees. Summary Judgment was entered



for the Defendants. In upholding the Summary Judgment, the Utah Supreme Court stated:

Public officials as individuals are protected by a qualified immunity from suits growing out of the performance of discretionary duties as long as they are acting in good faith and are not guilty of any intentional or willful wrong doing. A discretionary duty is one that requires the exercise of judgment or requires choice of alternatives in its performance. The decision as to how to best inspire or promote public faith in county law enforcement officers is thus clearly a discretionary duty. Therefore, absent allegations of bad faith, fraud or collusion, personal liability cannot be imposed on county officials. Snyder, Supra, at page 65.

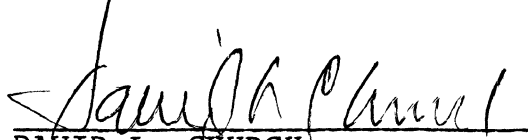
The Affidavits of Defendants filed with the Motion for Summary Judgment indicate that they acted in reliance on subordinates and not for any personal gain. There are no factual allegations of bad faith, fraud or collusion that are supported by affidavits of Plaintiffs.

#### CONCLUSION

The ruling of the Trial Court should be upheld. All actions of the Defendants regarding the roof repairs were undertaken in good faith. Repairing roofs is an act authorized by law for Counties. The fact that the technical requirements for letting construction bids was not followed does not amount to bad faith. While there may have been errors or mistakes in applying the law, they were errors made in good faith in reliance upon subordinates. Under

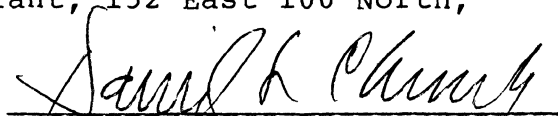
these circumstances there is no common law or statutory cause of action which creates personal liability for the County Commissioners or their bond agent.

DATED this 17<sup>th</sup> day of October, 1990.

  
DAVID L. CHURCH  
Attorney for Defendants

#### MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Appellee, postage prepaid, this 17<sup>th</sup> day of October, 1990, to Alvin G. Nash, Uintah County Attorney, Attorney for Appellant, 152 East 100 North, Vernal, Utah 84078.



APPENDIX

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